

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**JENNIFER ROUSSELL, on Behalf of  
Herself and Others Similarly Situated,**

**Plaintiffs,**

**vs.**

**BRINKER INTERNATIONAL, INC.,**

**Defendant.**

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**CIVIL ACTION NO. 4:05-CV-03733**

**PLAINTIFFS' EXHIBIT LIST**

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Bates</b>
1.	Employee Handbook 12/2003	BRINKER000044, 76-77, 000090
2.	Hourly Employee Handbook 1/2005	N/A
3.	Hourly Employee Handbook 1/2006	BRINKER000231, 263, 282
4.	Receipt of Brinker International's Employee Handbook signed by J. Roussell 5/17/03	BRINKER 090540
5.	Chili's Server Checkout Receipts	N/A
6.	E-mail to Barbara Youngman from Theresa McCaslin re: Tip Acknowledgment	BRINKER127405
7.	Brinker International Corporate Affairs Project Summary	BRINKER127401-403
8.	Project Memorandum re: Tip Credit 11/10/03	BRINKER126773-774
9.	Research Memorandum re: Tip Credit 02/27/03	BRINKER126762-763
10.	Brinker International General Guidelines for Tip Pooling	BRINKER126752-754
11.	Memorandum re: QA Position and Guidelines	BRINKER127085
12.	E-mail from Pam Mapes to Barbara Youngman re: QA Rate of Pay Change	BRINKER127385-387

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Bates</b>
13.	E-mail from Mike Bieber re: AD Notes	BRINKER125360-363
14.	Tip Credit and Allocation Policy	BRINKER093809; 089430; 107432; 088810; 081249; 078427; 054168;
15.	QA Certification – Procedures	BRINKER128078
16.	Regional Standards	BRINKER126603-04; 126609; 126599-602; 126610; 000140-145; 000033-37; 004915-23; 000001-4; 000021-23; 000858; 000027-29
17.	Forstall Regional Standards	BRINKER127169
18.	Leslie Regional Standards	BRINKER126759-761
19.	Local Options – Ithaca, Clay, Clarence, and Amherst, NY	N/A
20.	Chili's Abbeville #1151 Restaurant Policies	BRINKER140080-83
21.	Welcome Chili-Heads to Chili's Appleton: Restaurant Policies and Procedures	BRINKER107275-80
22.	Chili's Bastrop: Local Policies	BRINKER042402-03
23.	Chili's Baton Rouge #48: Store Policies	BRINKER060636-37; 06063
24.	Chili's Carillon: Local Options	BRINKER05508 (3 pages – last number cut off)
25.	Chili's Copperfield: Local Restaurant Policies	BRINKER02441 (3 pages – last number cut off)
26.	Chili's Destin Store: Policies	BRINKER110650-53
27.	Welcome to Chili's Gallatin	BRINKER038990-996
28.	Chili's Greenwood – Store Policies	BRINKER084621-24
29.	Welcome to Chili's – Mandeville, Hammond, Slidell, Metairie	BRINKER141905-913
30.	Chili's Mangum – Local Policies	BRINKER05505
31.	Chili's Metairie Store Policies	BRINKER022011-014
32.	Chili's Savannah Store Policies	BRINKER091395-96
33.	Chili's Sierra Vista Store Policies	BRINKER029668-71
34.	Chili's South Setauket – Local Options	BRINKER077246-48
35.	West Monroe Policies	BRINKER142009-13
36.	Chili's Westheimer Local Policies	BRINKER051730-32
37.	Williston Local Options	BRINKER127377-127384
38.	Regional Standards – Bob Higgins' Region	BRINKER127177-127178

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Bates</b>
39.	Chili's Grill & Bar Employee Information Sheet	BRINKER140299-302
40.	Signature page to Chili's policies and procedures – signed by Ash Adams	BRINKER000858; 849
41.	Tip Tracking Sheet	BRINKER127078
42.	Chili's Server Position Description	BRINKER125430
43.	Chili's Grill & Bar QA Position Description	BRINKER000005
44.	To-Go Specialist Job Description	BRINKER125421-125422
45.	Dishwasher Job Description	BRINKER125423
46.	Bartender Job Description	BRINKER125424-125425
47.	Bussperson [sic] Job Description	BRINKER 125426
48.	Cook Job Description	BRINKER125427
49.	Host Job Description	BRINKER125428
50.	Brinker International Tip Guidelines	BRINKER127079-127080
51.	Chili's Job Code Tip Flags	BRINKER126784
52.	Project Name: Tip Credit	BRINKER127402
53.	Notes from Team Meeting – 2/8/05	BRINKER126831
54.	Job Codes Eligible for Tip Credit	BRINKER126772
55.	Project Memorandum re: Tip Credit – 5/1/03	BRINKER126811-126812
56.	Research Memorandum re: Tip Credit	127417-127418
57.	HRLT/HRD Teleconference Notes – 11/12/03	BRINKER126748
58.	U.S. Department of Labor Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)	N/A
59.	Tip Glossary	BRINKER127754
60.	Email from Legal – Labor Compliance Communications re: re-visiting Brinker's position on the QA position – 1/19/06	BRINKER125358
61.	Email from Robin Robison re: QA position - 1/29/06	BRINKER125359
62.	Whistle Blower Communication Posting on Brinker's General Counsel's Page – 2/17/06	BRINKER000225

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Bates</b>
63.	Dinner QA Opening Duties, Running Duties, and Closing Duties	BRINKER125339
64.	Memorandum re: QA Position and Guidelines – 1/19/06	BRINKER125417
65.	Memorandum re: QA Position and Guidelines – 1/25/06	N/A
66.	Picture of Oakland Mall, MI Employee Board	ROU 000146
67.	Attention Servers!! Memo	N/A
68.	E-mail from Leslie Denny re: Tip Credit	N/A
69.	Job Codes – Tip Credit Eligible	N/A
70.	Memorandum from Corporate Affairs/Theresa McCaslin re: Chili's Tip Credit	N/A
71.	Memorandum from Corporate Affairs/Theresa McCaslin re: Macaroni Grill – Tip Credit	N/A
72.	Memorandum from Corporate Affairs/Theresa McCaslin re: OTB – Tip Credit	N/A
73.	E-mail from Judy Cimochoowski re: "compliance updates...tip credits and incentive payments" – 12/14/03	N/A
74.	Memorandum from Corporate Affairs re: Incentive Payments – 9/2/03	N/A
75.	Memorandum from Matt Charbonneau and Judy Cimochoowski re: "Time Clock –What you can and can not [sic] do" – 1/5/03	N/A
76.	E-mail from Judy Cimochoowski re: Tip Exception Reporting – 11/10/02	N/A
77.	E-mail from Leslie Denny re: memo from Concept Presidents and Memorandum re: Tip Reporting	N/A
78.	Theresa Bryant documents	BRINKER014289, 014336, 014337-38, 014373
79.	AD QA Tipping Notes	BRINKER127755
80.	Diagram of Miller Parkway Store – Zayas Deposition	Zayas Depo Exhibit 3

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Bates</b>
81.	Diagram of Brookfield Store – Zayas Deposition	Zayas Depo Exhibit 4
82.	Personnel files of Plaintiffs	MISC

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JENNIFER ROUSSELL, on Behalf of  
Herself and Others Similarly Situated,

Civil No. 4:05-cv-03733

Plaintiffs,

Judge Keith P. Ellison

v.

Case Manager: Stephanie Vaught

Court Reporter: \_\_\_\_\_

BRINKER INTERNATIONAL, INC.,

Proceeding: TRIAL

Defendant.

**EXHIBIT LIST OF DEFENDANT BRINKER INTERNATIONAL, INC.**

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
1.	Hourly Employee Handbook 12/03 (BRINKER000044-000090)				
2.	Hourly Employee Handbook 1/2005 (BRINKER000091-000138)				
3.	Hourly Employee Handbook 1/2006 (BRINKER000231-000282)				
4.	QA Job Description with Acknowledgment - 2005 (BRINKER000005)				
5.	QA Job Description - English and Spanish versions - 2005 (BRINKER126318-126319)				
6.	Server Job Description with Acknowledgment - 2005 (BRINKER125430 - 125431)				
7.	QA Workbook - August 2006 (BRINKER BRINKER142034 - 57)				
8.	QA Facilitator's Guide - August 2006 (BRINKER142058 - 67)				
9.	QA Tip Procedure excerpt from page 6 of QA Certification - August 2006 (BRINKER128078)				
10.	QA Tip Procedure excerpt from page 9 of QA Facilitator's Guide - August 2006 (BRINKER142031)				



No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
11.	QA Tip Procedure excerpt from page 9 of QA Workbook - August 2006 (BRINKER142032)				
12.	QA Tip Procedure excerpt from page 10 of QA Workbook Information - September 2007 (BRINKER142033)				
13.	Brinker International General Guidelines for Tip Pooling (BRINKER125340 - 125342)				
14.	Lunch QA Opening Duties (BRINKER125338)				
15.	Dinner QA Opening Duties (BRINKER125339)				
16.	January 19, 2006 Memorandum re: QA Position and Guidelines (BRINKER125417 and BRINKER127085)				
17.	January 25, 2006 Memorandum re: QA Position and Guidelines (ROU000080)				
18.	Handwritten diagram of positions (YOUNGMAN DEPOSITION EX. 5)				
19.	Brinker International Tip Guidelines (BRINKER127079-127080)				
20.	Tip Tracking Sheet (BRINKER127078)				
21.	Report on Job Code Comparisons (BRINKER126772)				
22.	A.M. Backwork Chart (BRINKER126757)				
23.	P.M. Backwork Chart (BRINKER126758)				
24.	Lisa Carbone's Employment Application Brinker International (BRINKER017187-017188)				
25.	Receipt of Brinker's Employee Handbook - Lisa Carbone - 07-17-05 (BRINKER017184)				
26.	Form W-4 (2005) - Lisa Carbone - 07-17-05				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	(BRINKER017179)				
27.	Form W-4 (2005) - Lisa Carbone - 11-22-05 (BRINKER017181)				
28.	Brinker International Payroll Company, L.P. Employee Orientation - Lisa Carbone - 07-17-05 (BRINKER017182)				
29.	Request for Electronic Payment - Lisa Carbone (BRINKER017180)				
30.	Employee Communication Form - Lisa Carbone 08-14-05 (BRINKER017186)				
31.	Handwritten diagram of restaurant (CARBONE DEPOSITION EX. 8, dated 10-15-07)				
32.	Tip Credit and Allocation Policy - Kathy Connolly - 05-07-04 (CONNOLLY DEPOSITION EX 1, dated 05-01-07)				
33.	Ted Davis Payroll Report - 03-15-06 thru 03-28-07 - (DAVIS DEPOSITION EX 1)				
34.	Resume of Ted Davis (DAVIS DEPOSITION EX 2)				
35.	Receipt of Brinker's Employee Handbook - Ted Davis - 03-04-06 (BRINKER118939)				
36.	Notice of Potential Plaintiffs - Position of Server - 10/31/07 (C. FOX DEPOSITION EX. B-P-2)				
37.	Handwritten diagram of restaurant (JAMISON DEPOSITION EX. 1)				
38.	Receipt of Brinker's Employee Handbook - John Linville - 09-15-04 (LINVILLE DEPOSITION EX. 6)				
39.	Wage/Employment Issues - Whistle Blower				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	Communication - 02-20-2007 (MASON DEPOSITION EX. 1)				
40.	Receipt of Brinker Employee Handbook - Sherreta Anderson (BRINKER002772)				
41.	Signed Acknowledgment on Tip Reporting - Sherreta Anderson - 4-7-05 (BRINKER002780)				
42.	Signed Acknowledgment on Tip Reporting - Sherreta Anderson - 10-11-05 (BRINKER002773)				
43.	Brinker International Employee Orientation - Danielle McDonald - 10-4-04 (BRINKER068269)				
44.	Employee Orientation & Policy Acknowledgment Folder - Danielle McDonald (BRINKER068269-068272)				
45.	Receipt of Brinker International's Employee Handbook - Danielle McDonald (BRINKER066283)				
46.	Brinker International Payroll Company, LP Employment Application - Tammy Parsons - 8-13-05 (BRINKER079830 - 079831)				
47.	Employee Orientation Folder - Tammy Parsons - 8-13-05 (BRINKER079822)				
48.	Termination of Employment - Tammy Parsons (BRINKER079824)				
49.	Notice of Potential Plaintiffs - Position of Server (PARSONS DEPOSITION EX. P-4)				
50.	Consent to Become Party Plaintiff - Tammy Parsons - 10-11-06 (PARSONS DEPOSITION EX. P-5)				
51.	Receipt of Brinker International's Employee Handbook - Tamara Berveiller - 9-13-04				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	(BERVEILLER DEPOSITION EX. 1)				
52.	Chili's Phoenix Bell F.O.H. Running Sidework (BERVEILLER DEPOSITION EX. 2)				
53.	Notice to Potential Plaintiffs - Position of Server (C. Fox Exhibit B-P-2) 10-3-07 and Consent to Become Party Plaintiff				
54.	Brinker International General Guidelines for Tip Pooling - Marci Luca (BRINKER 126752-126754)				
55.	Deposition Transcript Change and/or Correction Page - Jose Montoya, dated 5-31-07				
56.	Handwritten Diagram of Restaurant (NASS DEPOSITION EX. 1)				
57.	Employee Orientation Folder - Brian Paolillo (PAOLILLO DEPOSITION EX. B-P-1)				
58.	Notice to Potential Plaintiffs - Position of Server (PAOLILLO DEPOSITION EX. B-P-2)				
59.	Orientation and Policy Acknowledgement Folder - Allison Alfrey (BRINKER001772-001775)				
60.	Receipt of Employee Handbook - (PHILLIPS DEPOSITION EX. 1)				
61.	Checkout Receipt (ROBERTSON DEPOSITION EX. 1)				
62.	January 19, 2006 Memorandum re QA Position and Guidelines (BRINKER000139)				
63.	Handwritten Diagram of Restaurant (Spears Exhibit 1)				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
64.	Brinker International General Guideline for Tip Pooling (BRINKER125340-125342)				
65.	QA Certification Test - Rick Adams - (BRINKER000991-000992)				
66.	Brinker International Employment Application - Rick Adams (BRINKER000962- 000963)				
67.	Employee Orientation and Policy Acknowledgement Folder - Rick Adams (BRINKER000954)				
68.	Brinker International Employment Application - Allison Alfrey (BRINKER001776-001778)				
69.	Brinker International Employee Orientation Handbook and Policy Acknowledgment Folder - Jeremiah Brenner (BRINKER012444 - 012447)				
70.	Brinker International Employee Orientation Folder - Theresa Bryant (BRINKER014283)				
71.	Employee Policy Acknowledgment Folder - Theresa Bryant (BRINKER014285)				
72.	Receipt of Brinker International's Employee Handbook - Theresa Bryant (BRINKER014319)				
73.	Tip Reporting Acknowledgment - Theresa Bryant (BRINKER014320)				
74.	Handwritten diagram of tables - Theresa Bryant (BRINKER014373)				
75.	Brinker International Employee Communications Form - Theresa Bryant (BRINKER014289)				
76.	Brinker International Employee Orientation				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	Handbook and Policy Acknowledgment Folder - Wendy Dorr (BRINKER029501)				
77.	Employee Policy Acknowledgment Folder - Wendy Dorr (BRINKER029503)				
78.	Handout and Acknowledgment re Tip Reporting - Wendy Dorr (BRINKER029520-029524)				
79.	Acknowledgment re Tip Reporting - Mandybeth Downing (BRINKER030013)				
80.	Consent to Become Party Plaintiff - Maureen Farinato 10-5-06				
81.	Acknowledgment re Tip Reporting - Alysha Miller (BRINKER071500)				
82.	Brinker International Employee Orientation Folder - Jennifer Roussell (BRINKER090543)				
83.	Employee Policy Acknowledgment Folder - Jennifer Roussell (BRINKER090545)				
84.	Jennifer Roussell Pay Stubs (BRINKER000137-38)				
85.	Brinker International Payroll Company, LP Hourly Handbook - Jennifer Roussell (BRINKER000121-000122)				
86.	Acknowledgment on Tip Reporting - Jennifer Roussell (BRINKER123038)				
87.	Brinker International Payroll Company, LP Employment Application and Agreement to Arbitrate - Jennifer Roussell (BRINKER123031-123032)				
88.	Brinker International Employment Application - Chistina Slomkowski (BRINKER123409-123411)				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
89.	Consent to Become Party Plaintiff - Christina Slomkowski (SLOMKOWSKI DEPOSITION EX. 2)				
90.	Uniform Standards Acknowledgment Form - C. Slomkowski (BRINKER123408)				
91.	Brinker International Employee Orientation Handbook and Policy Acknowledgment Folder - Slomkowski, Christina (BRINKER123415)				
92.	Acknowledgment on Tip Reporting - E. Zayas - (BRINKER127247)				
93.	Brinker International Employee Orientation Handbook and Policy Acknowledgment Folder - E. Zayas (BRINKER127239 - 127242)				
94.	Handwritten Diagram of Miller Parkway Restaurant (ZAYAS DEPOSITION EX. 3)				
95.	Handwritten Diagram of Brookfield Restaurant (ZAYAS DEPOSITION EX. 4)				
96.	American Fork-CHI Local Policies (BRINKER141073)				
97.	Bedford-CHI Local Policies (BRINKER141088-90)				
98.	Camelback-CHI Local Policies (BRINKER140129-31)				
99.	Chattanooga-CHI Local Policies (BRINKER141768-70)				
100.	Clark-CHI Local Policies (BRINKER140136-39; BRINKER141099-102)				
101.	Corpus Christi-CHI Local Policies (BRINKER141794)				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
102.	Corsicana-CHI Local Policies (BRINKER141438-45)				
103.	Cross Creek-CHI Local Policies (BRINKER022250-51; BRINKER088074-76; BRINKER141795)				
104.	Eldersburg-CHI Local Policies (BRINKER140659-60)				
105.	Hot Springs-CHI Local Policies (BRINKER140210-13)				
106.	Houma-CHI Local Policies (BRINKER003178-79; BRINKER072973-74; BRINKER079444-45; BRINKER010844-45; BRINKER029272-73; BRINKER140708-11)				
107.	Houston Hwy 6-CHI Local Policies (BRINKER077151-53; BRINKER090532-34; BRINKER102602-04)				
108.	Jackson-CHI Local Policies (BRINKER139503-04)				
109.	La Place-CHI Local Policies (BRINKER016000-02; BRINKER141175-80)				
110.	Lawton-CHI Local Policies (BRINKER030925-27)				
111.	Lebanon-CHI Local Policies (BRINKER0141872-79)				
112.	Little Falls-CHI Local Policies (BRINKER141203-04)				
113.	Lubbock-CHI Local Policies (BRINKER140290-91)				
114.	Lyon Township-CHI Local Policies (BRINKER100543-44; BRINKER118298-99; BRINKER128648-50; BRINKER140292-93)				



No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
115.	Memphis-CHI Local Policies (BRINKER140306-12)				
116.	Oakland Mall-CHI Local Policies (BRINKER140822-28)				
117.	Odessa-CHI Local Policies (BRINKER141946-49)				
118.	Palisades Center-CHI Local Policies (BRINKER141243-47)				
119.	Phoenix Bell-CHI Local Policies (BRINKER140860-65)				
120.	Stillwater-CHI Local Policies (BRINKER128644-47; BRINKER140968-69)				
121.	Sugarland-CHI Local Policies (BRINKER006684-87; BRINKER141711-16)				
122.	Waco-CHI Local Policies (BRINKER140486-89)				
123.	Wellington-CHI Local Policies (BRINKER141022-23)				
124.	Williston-CHI Local Policies (BRINKER127377-82)				
125.	Wilmington-CHI Local Policies (BRINKER140516-18)				
126.	Winston Salem-CHI Local Policies (BRINKER028094; BRINKER066085-86; BRINKER094734-35; BRINKER094764-65; BRINKER114464; BRINKER114470-71; BRINKER114518-19; BRINKER114531-32; BRINKER140551)				
127.	Wolfchase-CHI Local Policies (BRINKER141048-54)				
128.	Adell 2002 Regional Standards				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	(BRINKER126603-04)				
129.	Bova 2004 Regional Standards (BRINKER000001 - 000004)				
130.	Brittingham 2003 Regional Standards (BRINKER126608)				
131.	Carroll 2002 Regional Standards (BRINKER126607)				
132.	Dugan 2006 Regional Standards (BRINKER140071 - 140075)				
133.	Forstall 2002 Regional Standards (BRINKER126609)				
134.	Gallagher 2003 Regional Standards BRINKER127179 - 127181)				
135.	Higgins 2003 Regional Standards (BRINKER000033 - 000037)				
136.	Leap 2004 Regional Standards (BRINKER000030 - 000032)				
137.	McKeating 2003/2004 Regional Standards (BRINKER126598) (BRINKER000024 - 000026)				
138.	Pearce 2004 Regional Standards (BRINKER000021 - 000023)				
139.	Sutter 2002 Regional Standards (BRINKER126606)				
140.	Williamson 2003 Regional Standards (BRINKER127174)				
141.	Williamson 2004 Regional Standards (BRINKER000007 - 000009)				
142.	Payroll Data for Bryant, Theresa at Store #462				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
143.	Payroll Data for Carbone, Lisa at Store #900				
144.	Payroll Data for Carter, Daniel at Store #29				
145.	Payroll Data for Corno, Charles at Store #236				
146.	Payroll Data for Davasher at Store #1019				
147.	Payroll Data for Davis, Ted at Store #146				
148.	Payroll Data for Donohue, Kirby at Store #754				
149.	Payroll Data for Dorr, Wendy at Store #828				
150.	Payroll Data for Evans, Heidi at Store #1145				
151.	Payroll Data for Farinato, Maureen at Store #839				
152.	Payroll Data for Fox, Richard at Store #721				
153.	Payroll Data for Garner, Sylvia at Store #452				
154.	Payroll Data for Hallmark, Jennifer at Store #986				
155.	Payroll Data for Hill, Lisa Lavada at Store #214				
156.	Payroll Data for Jandera, Jason at Store #575				
157.	Payroll Data for Kaddy, Jesse at Store #126				
158.	Payroll Data for Martino, Shari at Store #191				
159.	Payroll Data for Moodie, Nicole at Store #249				
160.	Payroll Data for Roussell, Jennifer at Stores #290, 112 and 124				
161.	Payroll Data for Slomkowski, Christina at Store #316				
162.	Payroll Data for Vial, Nicole Lena at Store				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
	#543				
163.	Payroll Data for Williams, Shannon at Store #1027				
164.	Payroll Data for Zayas, Emily at Store #996				
165.	Deposition Transcript of Adams, Rick				
166.	Deposition Transcript of Alfrey, Allison				
167.	Deposition Transcript of Anderson, Shereta				
168.	Deposition Transcript of Berveiller, Tamara				
169.	Deposition Transcript of Brenner, Jeremiah				
170.	Deposition Transcript of Bryant, Theresa				
171.	Deposition Transcript of Carbone, Lisa				
172.	Deposition Transcript of Connolly, Kathy				
173.	Deposition Transcript of Davis, Ted				
174.	Deposition Transcript of Denny, Leslie				
175.	Deposition Transcript of Dorr, Wendy				
176.	Deposition Transcript of Downing, Mandybeth				
177.	Deposition Transcript of Edwards, Kelli				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
178.	Deposition Transcript of Ellis, Elizabeth				
179.	Deposition Transcript of Evans, Heide				
180.	Deposition Transcript of Farinato, Maureen				
181.	Deposition Transcript of Folsom, Georgiana				
182.	Deposition Transcript of Fox, Christina				
183.	Deposition Transcript of Gray, Neefesha				
184.	Deposition Transcript of Hunt, Tiffany				
185.	Deposition Transcript of Johnston, Lauren				
186.	Deposition Transcript of Leslie, Tim				
187.	Deposition Transcript of Linville, John				
188.	Deposition Transcript of Luca, Marci				
189.	Deposition Transcript of Mason, David				
190.	Deposition Transcript of McCaslin, Theresa				
191.	Deposition Transcript of McDonald, Danielle				
192.	Deposition Transcript of Miller, Alysha				
193.	Deposition Transcript of Montoya, Jose				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
194.	Deposition Transcript of Nass, Rebecca				
195.	Deposition Transcript of Nicholas, Randy				
196.	Deposition Transcript of Paolillo, Brian				
197.	Deposition Transcript of Parsons, Tammy				
198.	Deposition Transcript of Philips, Alicia				
199.	Deposition Transcript of Platz, David				
200.	Deposition Transcript of Posa, Wendy				
201.	Deposition Transcript of Roberson, Jeffery Antonio				
202.	Deposition Transcript of Roussell, Jennifer				
203.	Deposition Transcript of Sandidge, Susan				
204.	Deposition Transcript of Slomkowski, Christina				
205.	Deposition Transcript of Standifer, John				
206.	Deposition Transcript of Walker, Corey				
207.	Deposition Transcript of Wamsley, Candace				
208.	Deposition Transcript of Watson, Katie				
209.	Deposition Transcript of Wilks, Jessica				
210.	Deposition Transcripts of Youngman, Barbara				
211.	Deposition Transcript of Zayas, Emily				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
212.	Notice of Consent - Roussell, Jennifer				
213.	Consent to Become Party Plaintiff - Adams, Rick				
214.	Consent to Become Party Plaintiff - Alfrey, Allison				
215.	Consent to Become Party Plaintiff - Anderson, Sherreta				
216.	Consent to Become Party Plaintiff - Brenner, Jeremiah				
217.	Consent to Become Party Plaintiff - Bryant, Theresa				
218.	Consent to Become Party Plaintiff - Carbone, Lisa				
219.	Consent to Become Party Plaintiff - Davis, Ted				
220.	Consent to Become Party Plaintiff - Dorr, Wendy				
221.	Consent to Become Party Plaintiff - Downing, Mandybeth				
222.	Consent to Become Party Plaintiff - Ellis, Elizabeth				
223.	Consent to Become Party Plaintiff - Evans, Heide				
224.	Consent to Become Party Plaintiff - Farinato, Maureen				
225.	Consent to Become Party Plaintiff - McDonald, Danielle				
226.	Consent to Become Party Plaintiff - Miller, Alysha				
227.	Consent to Become Party Plaintiff - Parsons, Tammy				

No.	Description	Offer	Obj.	Date ADMIT	Date N/ADMIT
228.	Consent to Become Party Plaintiff - Slomkowski, Christina				
229.	Consent to Become Party Plaintiff - Walker, Corey				
230.	Consent to Become Party Plaintiff - Zayas, Emily				
231.	CHI 146 Payroll Data for T. Davis's Time Worked After Jan 2008 (BRINKER142068-71)				
232.	CHI 721 Payroll Data for R. Fox's Time Worked After Jan 2008 (BRINKER 142072-80)				
233.	2004 QA Workbook (BRINKER084660-084685)				
234.	Evans, Heide Handbook Acknowledgement (BRINKER033371)				
235.	Ellis, Elizabeth Tip Credit Allocation Policy Acknowledgment (BRINKER032549-51)				
236.	2004 QA Facilitator's Guide Excerpts (BRINKER015904 and 046703)				
237.	Walker, Cory Tip Credit and Allocation Policy Acknowledgment (BRINKER127294)				
238.	Brinker International Employee Orientation Handbook and Policy Acknowledgment Folder - Miller, Alysha (BRINKER071496-98)				

Defendant reserves the right to amend or supplement this Exhibit List pursuant to the Federal Rules. Defendant designates these exhibits in an abundance of caution subject to and without waiving its right to seek to exclude certain exhibits at trial.



Respectfully submitted,

/s/ Fraser A. McAlpine

**Fraser A. McAlpine**

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Federal I.D. No. 3407

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ATTORNEY-IN-CHARGE FOR DEFENDANT  
BRINKER INTERNATIONAL, INC.

Of COUNSEL:

**Laura M. Franze**

State Bar No. 07389600

**Holly H. Williamson**

State Bar No. 21620100

**M. Brett Burns**

State Bar No. 03447900

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF TEXAS

## HOUSTON DIVISION

JENNIFER ROUSSELL, on behalf of  
Herself and others similarly situated,

Plaintiff,

V.

BRINKER INTERNATIONAL, INC.,

Defendant.

~~~~~

Civil Action No. 4:05-CV-03733

**PLAINTIFFS' WITNESS LIST**

Plaintiff Jennifer Roussell, on behalf of herself and other similarly situated (collective, “Plaintiffs”), designate the following witnesses who are expected to testify at trial:

1. Jennifer Roussell, Plaintiff
2. Rick Adams, Plaintiff
3. Allison Alfery, Plaintiff
4. Jeremiah Brenner, Plaintiff
5. Theresa Bryant, Plaintiff
6. Wendy Dorr, Plaintiff
7. Mandy Beth Downing, Plaintiff
8. Elizabeth Ellis, Plaintiff
9. Heidi Evans, Plaintiff
10. Maureen Farinato, Plaintiff
11. Alysha Miller, Plaintiff
12. Christina Slomkowski, Plaintiff
13. Cory Walker, Plaintiff
14. Emily Zayas, Plaintiff

All of these witnesses (nos. 1-14) are current or former Servers who worked for Defendant and who have filed consents to join this action. As previously represented to counsel for Defendant, these witnesses will testify as representatives of the class on subjects such as their employment with Chili’s, their wage and compensation information, including being paid a sub-minimum wage, with whom they shared their earned tips, including Quality Assurance or Expeditors (“QAs” or “Expos”), the coercion or pressure from management actions that they experienced to share their tips with QAs, the job duties and practices of QAs, and/or other similar employment and related matters. Each of the foregoing witnesses may be reached through Plaintiffs’ counsel Martin Shellist, SHELLIST LAZARZ LLP, 3D/International Tower, 1900 West Loop South, Suite 1910, Houston, TX 77027.

15. Barbara Youngman, Brinker Legal Compliance Manager

16. Susan Sandidge, Brinker Assistant General Counsel
17. Theresa McCaslin, former Brinker Reporting Manager in Corporate Affairs
18. Leslie Denny, former Brinker Director of Corporate Affairs
19. Tim Leslie, Brinker Research and Development Director

Each of the witnesses designated above (15-19) are current and/or form employees of Defendant who may testify concerning the following subjects: 1) the decision to classify QAs as non-tipped employees; 2) the decision to prohibit QAs from participating in mandatory tip pools; 3) corporate policies relating to QAs, including, but not limited to corporate job descriptions; 4) Chili's policies regarding employee tip pools; 5) other testimony regarding Plaintiffs' claims and Defendant's defense, to the extent previously designated on such topics. Each of the witnesses designated above (15-19) may be contacted through Defendant's lead attorney, Fraser McAlpine, Hunton & Williams LLP, Bank of America Center, 700 Louisiana St., Ste. 4200, Houston TX 77002.

20. David Borgen  
Laura L. Ho  
James Kan  
GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612-3534  
(510) 763-9800 (phone)  
(510) 835-1417 (facsimile)
21. Richard Burch  
BRUCKNER BURCH PLLC  
1000 Louisiana, Suite 1300  
Houston, TX 77002  
(713) 877-8788 (phone)  
(713) 877-8065 (facsimile)
22. Martin Shellist  
Daryl Sinkule  
Mark Lazarz  
SHELLIST LAZARZ LLP  
3D/International Tower  
1900 West Loop South, Suite 1910  
Houston, TX 77027  
(713) 621-2277 (phone)  
(713) 621-0993 (facsimile)

Assuming Plaintiffs are prevailing parties, the witnesses listed in nos. 20-22, and other lawyers who worked on the case, are expected to testify post-trial either live or via affidavit, as to the reasonableness and necessity of the attorneys' fees, costs, and expenses incurred in prosecuting this claim.

Plaintiffs reserve the right to amend this Trial Witness List pursuant to the Federal Rules.

Dated: March 2, 2009

Respectfully submitted,

By: /s/ James Kan  
DAVID BORGEN  
State Bar No. 099354  
*Pro Hac Vice*  
LAURA L. HO  
State Bar No. 173179  
*Pro Hac Vice*  
JAMES KAN  
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(713) 877-8065 (facsimile)

MARTIN A. SHELLIST  
State Bar No. 00786487  
Federal ID No. 16456  
DARYL J. SINKULE  
State Bar. No. 24037502  
Federal ID No. 12308  
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(713) 621-0993 (facsimile)

Attorneys for Plaintiffs

# EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF TEXAS

## HOUSTON DIVISION

**JENNIFER ROUSSELL**, on behalf of  
Herself and others similarly situated,

Plaintiff,

**V.**

BRINKER INTERNATIONAL, INC.,

Defendant.

§ Civil Action No. 4:05-CV-03733

~~~~~

## DEFENDANT'S WITNESS LIST

Defendant Brinker International, Inc. designates the following witnesses who are expected to testify at trial either by live appearance or by deposition testimony:

1. Steve Allen (General Manager, Lawton, Oklahoma)
2. Sherreta Anderson (Opt-In Plaintiff)
3. Paul Anzini (General Manager, Phoenix, Arizona)
4. Tamara Berveiller (Server, Phoenix, Arizona)
5. Amie Biller (General Manager, Corsicana, Texas)
6. Jesica Bogert (Server, Normal, Illinois)
7. Frannie Buzimkich (Server, Waterbury, Connecticut)
8. Lisa Carbone (Opt-In Plaintiff)
9. Kathy Connolly (Server, Burlington, Massachusetts)
10. Ted Davis (Opt-In Plaintiff)
11. Leslie Denny (Defendant Corporate (former))
12. Kelli Edwards (QA, Wellington, Florida)
13. Deborah Fisher (Server, Lebanon, Tennessee)
14. Georgiana Folsom (Server, Cross Creek, North Carolina)
15. Christina Fox (Server, Powers, Colorado)



16. Neefesha Gray (Server, Jackson, Mississippi)
17. Tiffany Hunt (Server, Corsicana, Texas)
18. Diane Jamison (Server, Winston, North Carolina)
19. Lauren Johnston (Bartender, Burlington, Massachusetts)
20. Jackie Lara (Manager, Sugarland, Texas)
21. Tim Leslie (Defendant Corporate)
22. John Linville (QA, Lawton, Oklahoma)
23. Marci Luca (Server, Reading, Massachussetts)
24. David Mason (General Manager, Burlington, Massachusetts)
25. Theresa McCaslin (Defendant Corporate (former))
26. Danielle McDonald (Opt-In Plaintiff)
27. Paul Meyer (General Manager, Little Falls, New Jersey)
28. Jose Montoya (Server, Phoenix, Arizona)
29. Rebecca Nass (Server, Memphis, Tennessee)
30. Randy Nicholas (General Manager, Hot Springs, Arkansas)
31. Brian Paolillo (General Manager, Powers, Colorado)
32. Tammy Parsons (Opt-In Plaintiff)
33. Todd Pearce (Defendant Corporate)
34. Alicia Philips (QA, Phoenix, Arizona)
35. David Platz (General Manager, Oakland, Michigan)
36. Wendy Posa (Server, Waterbury, Connecticut)
37. Jeffery Antonio Roberson (General Manger, Cross Creek, North Carolina)
38. Brian Rochow (Manager, Sugarland, Texas)
39. Susan Sandidge (Defendant Corporate)
40. Danielle Sirianni (Server, Winston, North Carolina)
41. Annie Spears Smith (Manager, Stillwater, Oklahoma)
42. John Standifer (General Manager, Wolfcase, Tennessee)
43. Gabrielle Stipanuk (QA, West Oaks, Texas)
44. Candace Wamsley (Server, Powers, Colorado)
45. Katie Watson (Server, Dover, New Hampshire)
46. Rob Wexler (General Manager, Palisades Center, New York)

- 47. Jana White (Server, Memphis, Tennessee)
- 48. Jessica Wilks (Bartender, Server, Canon City, Colorado)
- 49. Barbara Youngman (Defendant Corporate)
- 50. Chad Zimmerman (Manager, American Fork, Utah)
- 51. Any and all opt-in plaintiff remaining in this lawsuit not identified above
- 52. Any witness listed by any party on any witness list and/or initial disclosures

Defendant gives notice of its intent to call the opt-in plaintiffs remaining in this lawsuit at trial. Defendant reserves the right to amend or supplement this Trial Witness List pursuant to the Federal Rules. Defendant designates witnesses Denny, McCaslin, and Youngman in an abundance of caution subject to and without waiving its right to seek to exclude some or all of their testimony at trial.

Dated: March 2, 2009

Respectfully submitted,

/s/ Fraser A. McAlpine

**Fraser A. McAlpine**

State Bar No. 13321300

Federal I.D. No. 3407

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ATTORNEY-IN-CHARGE FOR DEFENDANT

BRINKER INTERNATIONAL, INC.

Attorneys for Defendant

**Trial Witnesses Defendant Intends To Call By Deposition**

No.	Witness	State of Residence	Depo. Tr.	Statement of Subject Matter and Substance of Testimony
1.	Berveiller, Tamara	Arizona	4:3-22:7; 23:7-23:17; 23:22-24:5	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
2.	Bogert, Jesica	Illinois	4:1-4:10; 4:18-22; 5:7-18; 6:20-14:2; 14:17-15:2; 27:4-34:3; 34:17-43:2; 45:10-54:20; 55:7-57:15; 57:20-58:10; 61:12-62:11; 66:21-68:11; 85:1-85:19; 89:12-90:4	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
3.	Connolly, Kathy	Massachusetts	4:1-4:10; 5:8-6:2; 8:6-8:17; 9:3-11:23; 12:3-33:18; 43:17-44:9; 44:10-46:14; 47:9-48:7; 49:4-50:8; 56:6-62:5; 65:12-66:16	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
4.	Denny, Leslie	California	5:4-66:12	Reserve Right to Make Responsive Designations as Applicable, Subject to and Without Waiving Objections to Testimony and Evidence Presented in Deposition
5.	Folsom, Georgiana	North Carolina	5:1-5:12; 5:16-8:2; 9:18-10:16; 10:22-14:12; 14:19-36:7; 37:3-38:21; 39:2-44:25; 45:2-46:3; 48:20-50:9; 50:13-50:15	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
6.	Fox, Christina	Colorado	4:1-4:6; 4:22-5:3; 5:15-7:23; 8:22-29:6; 30:2-30:22; 31:14-33:18; 35:6-39:22; 40:21-44:14	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible

**Trial Witnesses Defendant Intends To Call By Deposition**

No.	Witness	State of Residence	Depo. Tr.	Statement of Subject Matter and Substance of Testimony
7.	Gray, Nafeesha	Mississippi	4:1-4:3; 5:20-5:22; 6:17-6:20; 7:7-8:1; 10:14-10:16; 10:19-10:21; 10:24-12:22; 13:18-17:20; 18:10-38:25; 41:2-72:8	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
8.	Hunt, Tiffany	Texas	4:3-4:12; 4:16-5:6; 7:13-8:23; 9:19-10:9; 10:22-11:1; 11:13-11:17; 12:24-19:11; 20:25-23:3; 24:19-27:8; 28:1-29:15; 30:16-36:10; 37:2-37:20; 38:8-38:23; 48:1-48:17; 52:24-55:4; 59:19-60:1; 63:7-63:19	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
9.	Johnston, Lauren	Massachusetts	4:3-4:10; 4:13-8:13; 9:6-18:13; 20:7-20:16; 22:1-22:11; 26:13-27:2; 28:7-29:1; 29:19-30:10; 41:7-43:2; 44:20-46:14	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
10.	Linville, John	Oklahoma	5:1-5:4; 5:8-5:10; 7:19-8:13; 8:19-9:8; 9:25-10:16; 11:2-11:18; 15:13-16:12; 17:17-19:16; 21:3-23:6; 23:11-24:24; 25:7-26:23; 27:23-29:5; 30:1-30:11; 31:4-31:16; 32:15-33:1	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
11.	Luca, Marci	Massachusetts	4:1-4:8; 4:16-4:18; 7:2-7:18; 8:18-10:4; 12:21-20:13; 21:6-53:8; 54:1-54:16	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
12.	Mason, David	New Hampshire	4:1-4:4; 4:8-4:10; 6:2-7:6; 8:1-10:24; 11:9-11:13; 12:3-12:6;	Employment History; Testimony Regarding Lack of Manager

**Trial Witnesses Defendant Intends To Call By Deposition**

No.	Witness	State of Residence	Depo. Tr.	Statement of Subject Matter and Substance of Testimony
			13:12-14:5; 14:17-16:9; 18:11-18:13; 20:16-21:8; 22:12-23:10; 23:24-24:21; 27:3-28:3; 80:9-80:15; 84:6-84:12; 89:18-90:24; 91:3-92:21; 93:6-93:12; 95:21-97:13; 105:3-105:24	Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
13.	McCaslin, Theresa	Texas	4:2-140:21	Reserve Right to Make Responsive Designations as Applicable, Subject to and Without Waiving Objections to Testimony and Evidence Presented in Deposition
14.	Montoya, Jose	Arizona	4:1-4:5; 4:9-4:11; 4:15-4:20; 5:4-10:6; 10:22-22:7; 41:7-44:11; 46:3-46:14; 48:19-49:9; 49:14-54:12; 56:5-57:8	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
15.	Nass, Rebecca	Tennessee	5:1-5:9; 5:13-5:19; 7:16-9:17; 10:19-43:11; 45:7-46:20; 52:23-53:5; 54:4-54:12; 56:1-56:16; 97:24-99:4; 101:8-101:17; 128:14-129:15; 130:14-130:24; 134:2-135:18; 142:3-142:15; 143:4-143:22	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
16.	Parsons, Tammy	Colorado	4:1-4:14; 22:21-23:9; 23:16-24:9; 44:5-46:15; 49:6-51:8; 51:24-54:15; 54:20-55:14; 56:6-56:13; 57:3-57:18; 57:25-58:7; 59:23-60:6; 60:15-61:7; 63:18-64:4; 64:17-64:19; 67:21-69:13; 75:22-76:2	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
17.	Phillips, Alicia	Arizona	4:3-4:5; 4:14-4:16; 5:1-5:10; 7:19-8:13; 12:2-	Employment History; Testimony Regarding

**Trial Witnesses Defendant Intends To Call By Deposition**

No.	Witness	State of Residence	Depo. Tr.	Statement of Subject Matter and Substance of Testimony
			53:13; 90:8-91:15	Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
18.	Platz, David	Michigan	3:5-73:25; 106:12-117:14	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
19.	Posa, Wendy	Connecticut	4:3-90:18	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
20.	Sirianni, Danielle	North Carolina	4:1-30:3	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
21.	Smith, Anne Spears	Oklahoma	4:1-72:6	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
22.	Standifer, John	Tennessee	5:1-5:20; 6:23-78:3; 87:21-88:23; 92:22-95:1; 99:2-101:13; 126:1-128:15	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
23.	Wamsley, Candace	Colorado	4:1-4:6; 4:9-4:11; 8:8-8:23; 9:19-9:24; 10:7-11:2; 11:7-12:5; 13:22-	Employment History; Testimony Regarding Lack of Manager

**Trial Witnesses Defendant Intends To Call By Deposition**

No.	Witness	State of Residence	Depo. Tr.	Statement of Subject Matter and Substance of Testimony
			15:24; 16:4-17:7; 17:22-19:23; 20:5-26:17; 27:5-27:21; 28:13-28:15; 28:18-28:19; 29:4-31:22; 32:12-33:6; 33:25-35:22; 36:5-36:17; 37:14-38:6; 39:1-40:17; 41:20-43:15	Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
24.	Watson, Katie	New Hampshire	4:1-85:7; 125:16-129:5	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
25.	White, Jana	Tennessee	3:1-37:3; 56:23-58:8; 63:7-13	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible
26.	Wilks, Jessica	Colorado	4:1-65:10; 66:23-66:7	Employment History; Testimony Regarding Lack of Manager Coercion to Tip QAs; Testimony Supporting Defendant's Defense that QAs are Tip Pool Eligible

**Trial Witnesses Defendant Intends To Call By Deposition**

Defendant expressly reserves the right to call any of the individuals identified in Defendant's witness list by deposition in accordance with the Federal Rules of Civil Procedure.

Dated: March 2, 2009

Respectfully submitted,

/s/ Fraser A. McAlpine

**Fraser A. McAlpine**

State Bar No. 13321300

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